

# United States Court of Appeals for the Fifth Circuit

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No. 22-50370  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit  
**FILED**  
December 13, 2022

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

PAULO BERNAL-CETO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:21-CR-1070-1

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Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:\*

Paulo Bernal-Ceto appeals his sentence for his guilty plea conviction of illegal reentry after removal from the United States in violation of 8 U.S.C. § 1326. For the first time on appeal, he challenges the district court's application of the enhanced penalty range in § 1326(b) as unconstitutional because it permits a defendant to be sentenced above the statutory maximum

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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of § 1326(a) based on the fact of a prior conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. He raises the issue to preserve it for further review and has filed an unopposed motion for summary disposition, correctly conceding that it is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019).

Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Bernal-Ceto's motion is GRANTED, and the district court's judgment is AFFIRMED.